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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,516	03/06/2002	Peter Wagner	P/ 37-171	9644

2352 7590 03/29/2005

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NEW YORK, NY 100368403

EXAMINER

CONLEY, SEANE

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/937,516		WAGNER, PETER	
	<b>Examiner</b>		<b>Art Unit</b>	
	Sean E. Conley		1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 9/25/01, 5/15/03, 12/16/03.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 26-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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## DETAILED ACTION

### ***Amendment***

The preliminary amendment filed May 15, 2003 has been received and considered for examination. Claims 1-25 have been canceled and new claims 26-57 have been added.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 26-27 and 30-54 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The "blocking pin" is critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). Independent claim 26 recites a "stop". Therefore, the current claims 26-27 and 30-54 cover any conceivable "stop" presently existing or which might be discovered in the future and which would impart the desired characteristic. However, the applicant is only enabled for a blocking pin (86) that is attached to a spring (82) and held in an inclined position against step (100) as recited on page 18 of the specification.

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Claims 28 and 29 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The “thermal screening formed by bowl (72) and lid (74) which enclose the temperature sensor” is critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). Independent claim 28 recites, “the temperature sensor is protected from premature cooling”. The applicant is only enabled for the thermal screening comprising a bowl (72) and lid (74) as recited on page 13 of the specification.

Claim 55 is rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The “thermal screening formed by bowl (72) and lid (74) which enclose the temperature sensor” is critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). Independent claim 55 recites, “the temperature sensor is isolated from a cooling effect of the sterilization process”. The applicant is only enabled for the thermal screening comprising a bowl (72) and lid (74) as recited on page 13 of the specification.

Claims 56 and 57 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The “blocking pin that is attached to a spring and held in an inclined position against step” is critical or essential to the

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practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). Independent claim 56 recites a "stop". Therefore, the current claims 56 and 57 cover any conceivable "stop" presently existing or which might be discovered in the future and which would impart the desired characteristic. However, the applicant is only enabled for a blocking pin (86) that is attached to a spring (82) and held in an inclined position against step (100) as recited on page 18 of the specification.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 28, 29, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner (U.S. Patent No. 5,352,416) in view of Sagara (JP363115022A).

Regarding claims 28 and 55, Wagner discloses a sterilization container for holding sterilized items to be passed through a sterilization process in a sterilizer that includes a vacuum drying phase and a ventilation phase, the container is capable of remaining hermetically sealed and maintaining a vacuum established during the sterilization process; the container having a valve arrangement permitting an exchange of a medium between the sterilizer and the sterilization container during the sterilization process, the valve arrangement comprising, an open position of the valve arrangement to permit the exchange of the medium and a closed position of the valve arrangement operable to prevent the exchange of the medium; and a temperature sensor in the valve arrangement operable to prevent the valve arrangement from moving to the closed position until a set temperature cycle of the sterilizer is complete (see figures 1 and 10, column 1, lines 35-63, and column 4, lines 9-63). Wagner does not teach or disclose a temperature sensor that is protected from premature cooling.

Sagara discloses a means for more accurately measuring the temperature of a liquid. A temperature sensor (4) is used to measure the temperature of water in a water tank (17) of a cooling tower. The temperature sensor (4) has a cover (10) which is made of styrofoam and functions to shield the sensor from the external environment. The styrofoam cover (10) prevents the temperature from rising due to the radiant heat of the sunshine and the external air

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temperature, and also eliminates dew condensation due to the variation in external air temperature and water temperature. Therefore, the temperature sensor (4) accurately measures the temperature of the water and is unaffected by variables that would cause the measurements to be incorrect (see figure and abstract).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of Wagner and add a cover over the temperature sensor as taught by Sagara so that the temperature sensor would be unaffected by external variables such as condensation which causes variation in temperature (heating and cooling) and inaccurate temperature measurements.

Regarding, claim 29, Wagner discloses a temperature sensor that exhibits hysteresis based on temperature (see column 1, lines 15-32 and column 4, lines 48-53).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean E. Conley whose telephone number is 571-272-8414. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 10, 2005

SEC

*A.S.C.*

*John Kim*  
JOHN KIM  
SUPERVISORY EXAMINER  
GROUP 1700